

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

PARIS O. SIMPSON,

Petitioner,

Case No. 3:21-cv-109

vs.

LYNEAL WAINWRIGHT, Warden,  
Marion Correctional Institution,

District Judge Michael J. Newman  
Magistrate Judge Michael R. Merz

Respondent.

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**ORDER AND ENTRY: (1) ADOPTING THE THREE REPORT AND RECOMMENDATIONS OF THE UNITED STATES MAGISTRATE JUDGE (Doc. Nos. 25, 27, 31); (2) OVERRULING PETITIONER’S OBJECTIONS (Doc. Nos. 24, 28, 29, 39); (3) DENYING WITH PREJUDICE PETITIONER’S MOTION FOR RELIEF FROM JUDGMENT (Doc. No. 26); (4) DENYING A CERTIFICATE OF APPEALABILITY; (5) CERTIFYING THAT ANY APPEAL WOULD BE OBJECTIVELY FRIVOLOUS AND FINDING THAT *IN FORMA PAUPERIS* STATUS SHOULD BE DENIED ON APPEAL; AND (6) CLARIFYING THAT THIS CASE REMAINS TERMINATED ON THE DOCKET**

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This case is before the Court on the Report and Recommendation (Doc. No. 25), Report and Recommendation (Doc. No. 27), and Supplemental Report and Recommendation (Doc. No. 31) issued by United States Magistrate Judge Michael R. Merz, to whom this case was referred pursuant to 28 U.S.C. § 636(b). On January 3, 2022, this Court adopted Magistrate Judge Merz’s Supplemental Report and Recommendation dismissing Petitioner’s habeas petition with prejudice. Doc. No. 22. Nonetheless, Petitioner filed a “Supplemental Objection” to Magistrate Judge Merz’s Supplemental Report and Recommendation. Doc. No. 24. Magistrate Judge Merz characterized this objection as a motion to amend the judgment and recommended it be denied. Doc. No. 25. Petitioner objected to Magistrate Judge Merz’s characterization. Doc. No. 28.

Simultaneously, Petitioner filed a Motion for Relief from Judgment under Fed. R. Civ. P. 60(b)(5). Doc. No. 26. Magistrate Judge Merz, again, recommended that this motion be dismissed with prejudice in a Report and Recommendation (Doc. No. 27) and a Supplemental Report and Recommendation (Doc. No. 31). Petitioner objected to these recommendations. Doc. Nos. 29, 39. As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all filings in this matter, including Petitioner's objections.

Upon careful *de novo* consideration of the foregoing, the Court determines that the three Report and Recommendations (Doc. Nos. 25, 27, 31) should be adopted; that Petitioner's objections (Doc. Nos. 24, 28, 29, 39) should be overruled; and that Petitioner's Motion for Relief from Judgment (Doc. No. 26) should be denied with prejudice. The Court agrees with Magistrate Judge Merz's conclusions. Namely, the Court concurs that: (1) Petitioner's motion is best characterized as a Motion for Relief from Judgment (*See* Doc. No. 25); (2) Petitioner does not show a manifest error because his counsel was not ineffective when it correctly advised him that *State v. Fischer*, 942 N.E.2d 332 (Ohio 2010), *overruled by State v. Harper*, 159 N.E.3d 248 (Ohio 2020), did not apply to his resentencing (*Id.* at PageID 517); (3) Magistrate Judge Merz correctly ruled on the merits of Petitioner's objections (Doc. No. 27 at PageID 539–40); and (4) Magistrate Judge Merz had the authority to consider Petitioner's Motion for Relief from Judgment (Doc. No. 31 at PageID 553–54).

Accordingly, the Court: (1) **ADOPTS** the three Report and Recommendations of the Magistrate Judge (Doc. Nos. 25, 27, 31) in their entirety; (2) **OVERRULES** Petitioner's objections (Doc. Nos. 24, 28, 29, 39); (3) **DENIES WITH PREJUDICE** Petitioner's Motion for Relief From Judgment (Doc. No. 26); (4) **DENIES** Petitioner a certificate of appealability; (5)

**CERTIFIES** that any appeal would be objectively frivolous, and finds that Petitioner should be denied *in forma pauperis* status on appeal; and (6) **CLARIFIES** that this case remains **TERMINATED** on the docket.

**IT IS SO ORDERED.**

Date: September 20, 2022

s/ Michael J. Newman  
Hon. Michael J. Newman  
United States District Judge